(VIA EMAIL)

July 29, 2005

Mike Gallagher, PBT Coordinator
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Dear Mike:

Please accept these comments on the PBT rule on behalf of the Washington Toxics Coalition.

We are extremely concerned about persistent toxic chemicals and the impact they have on our health and environment. These harmful chemicals have been linked to birth defects, reproductive failure, learning and behavioral problems in young children, cancer, and other health problems.

Increasing evidence shows that PBTs are not going away, but instead are increasing in our bodies, homes, and environment. For example, a study released this month by the Environmental Working Group found that babies in the United States average 200 contaminants, many of them PBTs, in their umbilical cord blood. A March 2005 study found thirty-five hazardous industrial chemicals, including PBTs like PCBs, dioxin, and toxic flame retardants, in household dust from ten homes in Washington.

A strong PBT program and rule will help reverse these alarming trends. The PBT program was developed to address the shortcomings of the current regulatory approach to PBTs. The *Proposed Strategy to Continually Reduce Persistent Bioaccumulative Toxins (PBTs) in Washington State* (Strategy) states, "The current, single-medium focus has produced a system that emphasizes treatment of pollution, rather than preventing pollution through process/product changes. Unfortunately this contributes to PBT contamination because low levels of PBTs can escape detection and/or end-of-pipe treatment…."

Tackling the problem of PBTs will require a new way of thinking. Solutions do not lie solely in changing permit limits or other "end-of-pipe" remedies. Instead, an effective policy will require that safer substitutes be used in place of dangerous chemicals and promote the development and investment in safer substitutes and new processes and product designs. It will also require the state to take action to prevent harm from new or existing chemicals when credible evidence of harm exists even when some uncertainty remains regarding the exact nature and magnitude of the harm.

We appreciate the time and energy Ecology has put into developing the draft rule. However, the rule must be strengthened so that Washington state can meet the

fundamental goal of the PBT program set out in the state's Strategy: the elimination of PBT chemicals in Washington state.

Specifically, we have the following comments:

(Please note that we have attached to these comments a redlined version of the rule with proposed language changes.)

Clarify the Goal of the Program Is To Eliminate PBTs

Section 300 (3) a. must be eliminated because it conflicts with the purpose of the PBT program. Ecology has made a determination that chemicals on the PBT list pose a threat to human health and the environment. Including Section 300 (3) a. significantly weakens the rule and the program because it sends a message that the goal is not necessarily to eliminate or reduce all uses of a PBT in Washington. As stated in the Strategy several times, the goal of the PBT program is to reduce and where possible eliminate the use and production of PBTs.

There are several other sections that should be changed to reflect the elimination goal. We have made the language changes in the redlined version. The sections are:

- 200 and 400—the definition of CAP must be changed to reflect that a CAP is a plan to reduce and eliminate PBTs and is not used to manage PBTs.
- 420 (f) – CAPs should include recommendations on how to reduce and eliminate a chemical, not how to manage a chemical.

Revise Criteria to Include Phthalates On the List

Numerous studies have shown that phthalates affect human development. Most recently, they have been linked to reproductive problems in male infants. By adding phthalates to the list, Ecology would not be forging new ground. Many other PBT lists developed by other states and international organizations include phthalates and the European Union has recently taken steps to ban phthalates in children's toys.

One way the rule could add phthalates would be to use P or B and T. This would result in the inclusion of those chemicals that are toxic and that people are exposed to on a daily basis but do not persist in the environment for long periods of time. Phthalates are an example. Even though these chemicals do not persist in the environment for the requisite time to be considered a PBT under the rule, people are constantly exposed to them because they are found in everyday consumer products like baby toys and cosmetics.

Also, we would suggest of using bioaccumulation factor (BAF) for humans. In some instances information is not available on bioaccumulation in aquatic organisms. In such instances, Ecology should use evidence that the chemical accumulates in animals or humans. Using this more flexible criterion will allow for the inclusion of chemicals, like phthalates and metals, where information on accumulation in aquatic organisms is lacking.

Include All PBT Chemicals on the List Regardless of Whether They Currently Pose A Problem In Washington

We should not wait until a chemical is found to specifically pose a problem in Washington before taking action. The PBT program is an opportunity to take preventive action before PBT chemicals contaminate our bodies and the environment. The PBT list should include all chemicals that qualify as a PBT regardless of if they "currently" pose human health or environmental impacts in Washington. Also, data on levels of PBTs in Washington is incomplete making it difficult to determine whether a PBT poses a problem in Washington.

Include Currently Registered Pesticides and Fertilizers On the List

We do not support the exemption for pesticides and fertilizers. Chemicals should be included on the PBT list because they meet the P, B, and T criteria. Exempting pesticides and fertilizers that qualify as PBTs from the list creates a huge loophole in the program so that dangerous toxic chemicals that are harmful to people and wildlife will continue to be used in Washington state.

For example, the pesticide lindane is a neurotoxic and carcinogenic pesticide that persists in the environment and is magnified in animals and people. Because lindane's agricultural and pharmaceutical uses are regulated by different agencies, no one is taking responsibility for the combined impacts of both uses. Lindane's pharmaceutical uses have been banned in California with no reported problems, and Canada is phasing out agricultural uses. Thus, viable alternatives exist for all uses.

Pesticides and fertilizers should be included on the list, regardless of whether they are registered under current law. The current registration system is not a guarantee that pesticides and fertilizers are safe. In fact, the current system neglects to evaluate aggregate and cumulative human risks for pesticides not used on food, and does not estimate such risks for fish and wildlife at all. It virtually ignores so-called "inert ingredients" that make up the bulk of many pesticide products and has yet to evaluate risks to the endocrine system.

The PBT program was established because current regulatory approaches are not working. It is not scientifically defensible to exclude pesticides and fertilizers from a program that has a goal of eliminating PBT chemicals. Science, not politics, should determine what qualifies as a PBT. We urge Ecology to include pesticides and fertilizers on the list.

If Ecology should decide to include the exemption, we ask that Ecology change the current language to reflect that pesticides that lose their registration after the adoption of the rule become eligible for the PBT list. Currently, the rule exempts a pesticide that was registered on the date of the rule's adoption. This would mean that regardless of whether a pesticide's registration becomes invalid at a later date, the pesticide would remain exempt. The intent of the exemption, we believe, was to only exempt those pesticides with an ongoing valid registration, rather than to provide a never-ending exemption for all pesticides validly registered at the time of the rule adoption.

Review and Update the PBT List Every Three Years.
Because new scientific information on chemicals is continually emerging Ecology should review, and if necessary update, the PBT list at least every three years.

Expand the Intended Uses Of the PBT List.
The intended uses of the PBT list in WAC 173-333-300 (2) do not reflect the goals and purposes of the PBT Strategy. The section must be expanded to include all of the elements of the PBT Strategy. The specific language is included in the redlined version of the rule attached to these comments.

Eliminate the Second Set Of P, B, and T Criteria.
We oppose using two sets of P,B, and T criteria—one for identifying chemicals on the list and one for choosing the chemicals for CAPs. There is no scientific reason to include a second set of criteria. All chemicals on the PBT list should be eligible for CAPs, not just those Ecology has determined are the "worst of the worst". The purpose of the list is to identify "chemicals that require further action because they remain in the environment for long periods of time where they can bioaccumulate to levels that pose threats to human health and environment . . . . " (WAC 173-333-300 (1)) If chemicals on the list have the potential to cause harm, then Ecology should be taking action on those chemicals on the list. There is no need to have a second set of criteria that make it more difficult to select a chemical for a chemical action plan.

Instead, we suggest the following approach for determining the chemicals on the PBT list and the best chemicals for CAPs:

1. Use the criteria outlined in proposed WAC 173-333-320 with the modifications we suggest above to determine what chemicals appear on the PBT list.

2. Establish criteria for ranking chemicals. Taking the list derived in step 1, apply the selection factors in proposed section 410 (3) (with modifications in attached red-lined version).

The rule also must clarify what data will be used to determine environmental presence, uses, and releases for the purposes of selecting chemicals for chemical action plans. We propose including all of the following:

- Body burden data
- Data from permits (NPDES, waste, and others)
- Data from the MTCA site list
- If Washington state data is not available (e.g. body burden), then information from other geographical areas such as the data in the national reports on human exposure to environmental contaminants and other state and local studies

- Data on uses from other states such as Massachusetts because use data is collected there.

CAPs Should Focus On Preventing Pollution Through Process/Product Changes and Finding Safer Substitutes

CAPs should call for finding solutions through process and product changes, not purely through end-of-pipe measures. Following this approach, we believe that one of the major factors used to evaluate potential CAP recommendations should be the availability of alternatives. We suggest changing section 420 (1) (f) to require that CAPs include recommendations for eliminating a chemical for any use where safer alternatives are identified. If a safer alternative is not available, then the CAP should set a timeline for phase-out and provide for research on potential alternatives and incentives for businesses actively involved in researching safer substitutes. Please see our suggested language changes in proposed section 420.

We also suggest that CAPs include recommendations for developing markets for less toxic alternatives. This approach can be a strong driver for getting large sectors (business, government) to move away from toxic chemicals to safer substitutes.

Clarify The Evaluation of Economic and Social Impacts

The rule is unclear about what economic and social impacts will be evaluated in CAPs (section 420 (1) (f)). How does Ecology plan to conduct this analysis? What economic and social impacts will be analyzed?

Voluntary Actions Must Include Timelines and Performance Measures

The rule should be amended to clarify that Ecology will require timelines for implementation and performance measures for any voluntary action adopted under a CAP. A voluntary action recommendation must also be accompanied by alternative reduction and mandatory actions if the voluntary action does not work.

Remove the Economic Analysis of the CAP

The economic analysis of the CAP is redundant. Ecology will already be conducting a cost analysis for each recommendation.

Establish Three-year Schedule For the Preparation of CAPs and Prepare Two CAPs Per Year.

The current process for determining what chemicals will be selected for CAPs (proposed WAC (3) b.-d.) is extremely time consuming and expensive and will slow down the CAP process significantly. Instead of putting each proposed chemical selection out for public comment, we suggest that Ecology develop and submit for public comment a three-year schedule for proposed CAPs. The schedule would outline the chemicals for which phase-out plans will be prepared, include a timeline for completing the plans, and provide the rationale for selecting each chemical. We believe such a schedule will provide stakeholders, the public, and policymakers with a clearer understanding of what chemicals Ecology will be addressing and the what resources will be necessary to do the work.

The pace for CAP development is too slow. Ecology has only completed two action plans in five years. This is much too slow when you considered how quickly these chemicals are increasing in the environment and our bodies. Ecology should be completing at least 2 CAPs per year.

Modify Several Definitions In Section 200

The definition of "credible scientific information" is vague as to what are "standard" methods and protocols. We suggest replacing "standard" with "generally accepted". The definition also is not clear on whether peer-reviewed scientific journals are acceptable. We suggest clarifying this point by specifically adding peer-reviewed scientific articles to the definition.

Because there are now two sets of criteria for determining whether a chemical is a PBT, the reference to "criteria established in this chapter" in the definition for "persistent bioaccumulative toxin" is unclear . Is a chemical a PBT because it meets the criteria outlined in section 320 or because it meets the second set of more stringent criteria in section 410? We believe the criteria in section 320 better define a PBT so the definition should specifically reference section 320.

In the definition of "sensitive population group," the term "different" should be eliminated. Sensitive population groups experience the same response to a chemical that others experience but just at a lower level of exposure.

Also the term "PBT" in the definition of "sensitive population group" should be changed to chemical because it is possible that a person's exposure comes from a chemical that contains a PBT but is not a PBT itself. The wood preservative pentachlorophenol is an example of this. It may not qualify as a PBT itself but it contains dioxin, which is a PBT.

Thank you again for your time and hard work. If you have any questions or concerns, please do not hesitate to contact me at 206-632-1545 ext. 122.

Sincerely,

Ivy Sager-Rosenthal
Environmental Health Advocate
Washington Toxics Coalition